

TOWN OF WEBSTER, NEW HAMPSHIRE

Zoning Board of Adjustment

945 Battle Street/Rte. 127

Webster, NH 03303

Tel. (603) 648-2272

Fax (603) 648-6055

e-mail: townofwebsterpb@tds.net

Zoning Board of Adjustment Minutes

October 9, 2007

Members Present: Chairman Martin Bender, Secretary Patricia Inman, David Barnes, Donald Koberski, Robert Drown, Jr., and Linda Hook. Also present were Planning & Zoning Assistant Sarah Carter, applicants and many residents.

7:00 P.M. The Board met with Matthew and Leah Fallon who requested approval for a special exception due to the recent discovery that their house was constructed at 35' from the boundary line. The Fallons advised the Board that they are unable to proceed with refinancing on their home with out first obtaining the approval of a special exception. Chairman Bender asked if they were required to provide a map of the property in order to finance for the initial purchase of land where their home is. Until this point, everything has been privately financed. The Fallons also stated that they have begun the process in which to purchase the abutting lot of the lot line being encroached upon. The Board asked if the property had ever been surveyed, to which Mr. Fallon answered that to accommodate the recent subdividing of his lot from another, a plan was recorded and he has not seen a copy of that survey. Mr. Koberski asked if there were any issues in getting the building permit. Mr. Fallon said there were no problems in obtaining the permit. Chairman Bender then asked if the inspector had ever been out and measured. To Mr. Fallon's knowledge, no one had been out to take measurements. Chairman Bender then asked how it was determined that the house was built too close to the lot line. Mr. Fallon said that was found through another survey which was done when the Fallons asked the bank to refinance from a construction loan to a permanent mortgage. Chris Vary asked if this exception is needed for the purchase of the lot behind where the Fallons currently own. Mr. Fallon said that in order to refinance, a special exception is needed and that during that process, money would be set aside to accommodate for the purchase of that land. Chairman Bender asked if there were plans to construct on the property after it is purchased. The Fallons said they would not be building on that piece. Peter McGrath, a partner of the Peter & Gary, LLC who owns an abutting lot to that Fallons, spoke in support of the proposal. Mr. McGrath and his LLC are abutters on three sides of the Fallons. Harold Janeway asked if the Board could approve such activity contingent upon the actual purchase of the abutting land. Chairman Bender responded that he did not feel such a stipulation could be made because the land has not yet been purchased. With no further comments from the audience, Chairman Bender closed the public hearing and opened to deliberation by the Board. Chairman Bender asked Mr. Fallon how large the current lot is, Mr. Fallon answered it is 5.6 acres +/- . Chairman Bender asked how much road frontage that lot has. Mr. Fallon answered approximately 524'. (Actual frontage is 549.71'). Mr. Fallon added that because of the location of his home, the land would not be suitable for another home to be built. Chairman Bender asked Mr. Fallon for clarification with the potential purchase of the lot behind Mr. Fallon, it is true that lot does not have road frontage. Mr. Fallon agreed that it does not. With that, David Barnes made the motion to approve the special exception to allow the Fallons to have their home 35' from the back lot line. Motion was seconded by Donald Koberski, the vote of the Board was unanimously in favor of approval.

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7:10 P.M. Chairman Bender reopened the hearing for Cold Brook Campground owned by James and Tina Schindelwig who propose expansion of the campground by an additional 90 sites through commercial exception that would include sites and buildings both pre existing and grandfathered.

Chairman Bender announced that this evening's portion of the hearing would be closed to testimonies to allow for deliberation of the Zoning Board. Patricia Inman asked the Schindelwigs and their attorney if anyone had brought along a copy of the Driveway Permit from D.O.T. in which the State gave approval for alteration of the driveway. The copy was provided previously in the petitioner exhibit marked and highlighted as Exhibit 1 under exhibit tab "H". Chris Vary asked the Schindelwigs if there were provisions available in the event they would ever be made to relocate the driveway. Atty. McGrath added that the D.O.T. mainly reviews for line of site and that any relocation would then have to be approved also by the State. Chairman Bender stated that the letter of approval from D.O.T in short says that they approve the current driveway even with the addition of 90 more camp sites. Secretary Inman addressed concern for the turn area not being enough to accommodate for a "big rig RV" turning into Route 127 with oncoming traffic or even with traffic that may be coming up behind the RV as it's pulling out. Mr. Schindelwig added that offer putting signs up on both sides of Route 127 stating "Campground Entrance Ahead". Secretary Inman and Mr. Drown, Jr. ask if the map dictates where the lines for the sewer, water, and electric are proposed to be located. Mr. Schindelwig pointed to the Board that all the sewer and electric would run down behind each site, and the water would be located on the opposite side and down towards the sites. Ms. Inman reminded Mr. Schindelwig that they should be located at least 50' from the lot line. Mr. Schindelwig agreed that the tanks are required to be that far away. Mr. Drown, Jr. added that the lines also have to meet the 50' setback to State boundaries. Mr. Schindelwig stated that the setback would be complied to, as many of the rigs that would set up there, each have their tanks set up in different locations, so the lines would run to the center of each site to be able to accommodate everyone. Mr. Drown, Jr. then asked if the pine trees depicted on the map were those along Rte. 127. Mr. Schindelwig agreed. Ms. Inman and Mr. Drown, Jr. wanted clarification that the trees showed the State boundary. Mr. Schindelwig stated that he believed he owned up to the road. Mr. Drown, Jr. reminded Mr. Schindelwig that the State has a 100' right of way, meaning 50' on either side from the center of the road. Mr. Schindelwig and Atty. McGrath both confirm that on the side of the trees facing the street, the distance is at least 100' from the edge of the road. Chairman Bender asked if there were two driveways. Mr. Schindelwig said that one of them is not a driveway; it is a right-of-way up to his property. At the time of purchase, it was used as a right-of-way and it was deeded with the property. Chairman Bender asked if there was use of both driveways, the one approved by the State, and the second which is the right-of-way. Mr. Schindelwig answered yes, but that it is not used by campers, only by the occasional propane truck. Mr. Drown, Jr. asked Mr. Schindelwig where the sites were going to be located in relation to the abutting lot owned by Mr. Larochelle. Currently the map shows that there is at least 50' from that lot line to the end of the sites, there are also traditional agricultural setbacks of 125' from the lot line. Mr. Drown, Jr. added that if this proposal is approved, there may be a need to push those sites back from the lot line an additional 75'. There was discussion between some of the Board members, Mr. Schindelwig, and Atty. McGrath of the possible need for a line of trees or a fence between the sites and the lot line. It was suggested by Atty. McGrath that this could be addressed as a condition to the approval to make for this provision. Mr. Schindelwig also added that they have recently had that area surveyed so they now know where all boundaries are located. Mr. Mullins reminded Chairman Bender that if the Board is allowing the applicant to provide testimony, it should be allowed for others as well. Chairman Bender stated that the applicants were answering questions asked by the Board; the Board will ask questions of anyone, when necessary. Ms. Inman mentioned the number of complaints brought up at the last session in regards to noise and smoke, and asked how these should be addressed. Chairman Bender said that the discussion should go back to the beginning, which is that fact that there are 56 more sites. Chairman Bender gave the history of the number of sites:

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Before the Schindelwigs owned the campground, in 1972 there were 48 sites before the Zoning Ordinance was adopted in 1974. In 1974, the owners then came for the approval to add 12 more sites which was approved. Then in 1979 those owners came back for the approval to add another 9 sites. When the campground was purchased by the Schindelwigs there were a total of 69 sites. Since the time of purchase, and to date, the Schindelwigs: In 2000 added 7 sites, in 2002 added 16 sites and again later in 2002 added another 33 sites without prior approval from the Zoning Board. Chairman Bender suggested that the review start with approving the current 56 illegal sites prior to consideration of the proposal of any more sites. As mentioned during the last session, there was no provision of records of who the Schindelwigs talked to at the Town of Webster. Chairman Bender felt that such information would not be pertinent in this situation as the regulations in Article V; Section 1.F was in effect at the time the Schindelwigs purchased the property. Approval from the Zoning Board should have been sought and was not. Chairman Bender also asked if it were true that there are 28+/- units stored during the off season. Mr. Schindelwig agreed that there are. Chairman Bender referred Mr. Schindelwig to the Zoning Ordinance in Article III, Section 5 where it states "It shall be unlawful for any person to utilize a recreational vehicle on a temporary basis who does not possess a permit from the Board of Selectmen. A permit is not required for the storing or parking of a recreational vehicle during periods of non-use on the premises of the owner. No permit shall be issued for any period greater than 90 days per calendar year. A permit is not required for the use of a recreational vehicle in a State and locally approved campground." Mr. Vary mentioned that storage of units during the off season is common for most campgrounds. Chairman Bender reiterated that Webster's Zoning Ordinance states that there would be storage for owners only on their own property. Chairman Bender asked if those units that stay on premises off season are taxed by the Town. Atty. McGrath showed where there are copies of tax bills enclosed in Exhibit 1 of the petitioner exhibit under tab "D". Chairman Bender asked again if those units specifically were being taxed as the bills were specific to the question. Chairman Bender deferred the question to the Selectmen who were present. Atty. McGrath expressed opposition to that request as in the previous session Mr. Mullins had recused himself from Selectmen status for the purpose of the hearing. Chairman Bender allowed the Selectmen to answer the question as it was a direct question from the Zoning Board. Selectmen Mullins then deferred the question to be answered by the Chairman of the Board of Selectmen of who had not stated his position previously. Atty. McGrath still was opposed to any of the Selectmen answering this question. Chairman Bender allowed the Selectmen to proceed with the answer. Selectman Hashem said that the units are taxed as seasonal dwellings. The units that are taxed are those which don't move or roll. Mr. Vary felt that as it is common for there to be off season storage at other places, and that these particular units can not be seen from the road, that the argument of how they are taxed and whether or not the units are there year round was not an argument that was needed to be made. Chairman Bender then asked about the property values. Chairman Bender referred to the Zoning Ordinance, Article V.1 and Section B in reference to prohibited uses. During the last session, the applicants claimed that their values as well as everyone else's values in Town went up. The fact is that the tax rate went up for all residents, not necessarily the property values. Chairman Bender asked Judith O'Donnell (a direct abutter to the campground for 34 years) as she, over most people, might recognize a difference in her property values in conjunction with the activity at the campground. Chairman Bender explained that he asked this question of Ms. O'Donnell due to the fact that it is up to the applicant to prove the activity does not affect surrounding property values. Chairman Bender felt that the applicant failed to provide such information. Atty. McGrath asked if he could speak, the request was granted. Atty. McGrath stated that copies of the tax bills had been provided and that the provision refers to values and not tax rate. To which Chairman Bender agreed, however, every resident in Webster had their values increased over the last ten years. Chairman Bender's question was, are the abutter's property values lower than they would have been because of the location and would they continue to lower if the campground increases in size. Atty. McGrath argued that the provision states that the applicant must prove otherwise of any undue harm of property values. Mr. Vary disagreed with Atty. McGrath's argument in that what the Zoning Board is looking for is the applicant to prove to the Board that there would be no damage to an abutter

trying to sell their home at a reasonable rate. Chairman Bender also mentioned the noise, smoke, and traffic. Chairman Bender mentioned that the safety at the curve on Rte. 127 near the driveway of the Campground is a concern of the Board; thought the State has approved the location. The aquifer is also a concern of the Board; however the State has also approved the activity. Chairman Bender stated the abutter's concerns from the last session as they were concerned about the smoke and the noise. This proposal would nearly double the Campground in size, and in actuality, would quadruple the size by increasing from 69 sites by 146 more sites, not just the 90 addressed in this proposal, due to the fact that there are sites which have been added previously that as yet, do not have Zoning Board approval. Mrs. Hook said that as abutters did not get the chance to address their concerns prior to those additions; they are now able to address those concerns of too much smoke and noise. There certainly are issues with those conditions. Chairman Bender mentioned that though others spoke in favor, for example, the Police and Fire Departments did not have an issue with expansion, those people do not live and abut the Campground year round. Mr. Drown Jr. agreed with other Board members, that abutters would want to be opening their windows and using their yards during those seven months when campfires are burning, however, campfires go along with campgrounds and this campground is located in a valley where the smoke lingers. Mr. Drown Jr. asked the Schindelwigs how many of the 90 new sites were going to be allowed to have fire pits. The 50 proposed sites in the rear would be the only ones with fire pits as the 40 motor coach sites towards the front would not be permitted to have fire pits. Mrs. Hook mentioned again that smoke is not so much her concern as the fact that abutters don't agree with the current smoke and there are those 56 sites that do not have approval yet which are being operated and are using fire pits. Mr. Drown, Jr. asked the Schindelwigs what is being to keep the campers from trespassing onto abutter's property. The response was that saw horses are put up with a sign attached stating "No Trespassing – Campground Ends Here". Mr. Vary asked if denial of this proposal would affect the 56 illegal sites. Chairman Bender said that it would, as the approval is currently only for 69 sites. The applicants would need to come back and request approval for the 56 illegal sites and upon approval, could then propose another 90 sites. A motion was made by Don Koberski, to approve the proposal as written which is expansion of campground by additional 90 sites through commercial exception that would include sites and buildings both pre existing and grandfathered. The motion was seconded by Robert Drown, Jr. A vote was taken resulting in the unanimous decision of denial. Chairman Bender reminded the applicants that they have 30 days in which to file for a rehearing. The Board adjourned the meeting at 8:30 P.M.

Respectfully submitted,

Patricia Inman – Zoning Board Secretary